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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAUL PEREZ REYNA,

Defendant and Appellant.

F056006

(Super. Ct. No. F07902885)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Ralph Nunez, and Jonathan B. Conklin, Judges.[†]

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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*Before Cornell, Acting P.J., Dawson, J., and Kane, J.

[†] Judge Nunez presided over appellant's change of plea hearing. Judge Conklin sentenced appellant.

FACTS AND PROCEEDINGS

On September 20, 2007, appellant, Raul Perez Reyna, was charged in an information with felony possession of marijuana in the Fresno County Jail (Pen. Code, § 4573.6).¹ The information alleged three prior serious felony convictions within the meaning of the three strikes law. The information also alleged a prior prison term enhancement within the meaning of section 667.5, subdivision (b).

On June 2, 2008, appellant executed a felony advisement of rights, waiver, and plea form in which he acknowledged and waived his constitutional rights pursuant to *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*). Under the plea agreement, appellant would admit count one and would receive a stipulated upper term sentence of four years. The trial court established that appellant executed the change of plea form and that he understood everything set forth in it. The court advised appellant of his *Boykin/Tahl* rights, which appellant waived. Appellant pled guilty to count one and admitted the prior serious felony conviction. The court granted the prosecutor's motion to strike the enhancement and the other prior serious felony allegations. The parties stipulated that the police reports provided a factual basis for appellant's plea.²

At sentencing on July 16, 2008, the trial court sentenced appellant to the low term of two years, doubled to four years pursuant to the three strikes law. Appellant received the stipulated sentence. The court also imposed a restitution fine. Appellant filed a timely appeal. Appellant's request for a certificate of probable cause was denied.

¹ Unless otherwise noted, all further statutory references are to the Penal Code.

² On March 29, 2007, at 6:38 p.m., a correctional officer at the Fresno County Jail received information that appellant was selling marijuana cigarettes in jail. A sheriff's deputy asked appellant to step from the pod in which he was located. Appellant called for another inmate to take an envelope from him that he was clutching in his right hand. After a brief struggle, a correctional officer retrieved the envelope which contained seven small marijuana cigarettes.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, raises no issues, and requests this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on January 8, 2009, we invited appellant to submit additional briefing.

Appellant replied with two letters filed on January 16, 2009, and February 9, 2009, arguing that he was entitled to custody credits from the date of his arrest in jail, March 29, 2007, until he was sentenced in his other case on June 15, 2007. Appellant argues that both the prosecutor and his counsel agreed that he was entitled to such credit. The issue of custody credits was not raised or made part of the plea agreement. There is no record of an agreement, if any, concerning custody credits from the other action. Appellant raises a point that we cannot presently review or address.³

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.

³ Furthermore, the California Supreme Court has held that "a prisoner is not entitled to credit for presentence confinement unless he shows that the conduct which led to his conviction was the *sole* reason for his loss of liberty during the presentence period." (*People v. Bruner* (1995) 9 Cal.4th 1178, 1191 (*Bruner*), italics added.) *Bruner* held that because the defendant's presentence custody stemmed from multiple, unrelated incidents of misconduct, such custody cannot be credited against a subsequent formal term of incarceration if the prisoner fails to show that the conduct that underlies the term to be credited was also a "but for" cause of the earlier restraint. Accordingly, his presentence custody could not be credited against a subsequent term of incarceration. (*Id.* at p. 1193-1194.) Because appellant has not shown that he could have been free during any period of his presentence custody but for the same conduct that led to the instant conviction and sentence, he is not entitled to credit on that sentence for the period of presentence restraint. (*Id.* at p. 1195.)